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8 Attorneys for Defendant
9 PLAYTEX PRODUCTS, INC.

10
11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

13 DAVID PAZ, an individual and on
14 behalf of all others similarly
15 situated,

16 Plaintiff,

17 vs.

18 PLAYTEX PRODUCTS, INC., a
19 Delaware Corporation, and Does 1
20 through 100, inclusive

21 Defendants.

CASE NO.: 07CV2133 JM (BLM)

**DECLARATION OF ELLEN L.
DARLING IN SUPPORT OF
DEFENDANT PLAYTEX
PRODUCTS, INC.'S MOTION TO
DISMISS PLAINTIFF'S
COMPLAINT**

**[Filed Concurrently With Playtex's
Motion to Dismiss; Declaration of
Brenda Liistro]**

Date: 12/28/07
Time: 1:30 p.m.
Courtroom: 16

Date of Removal: 11/07/07
Trial Date: None

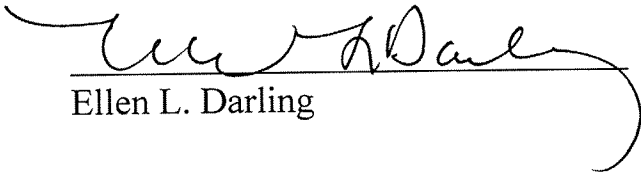
22 I, Ellen L. Darling, declare as follows:

23 1. I am an attorney admitted to practice law before the United States
24 District Court for the Southern District of California and I am a partner with the law
25 firm of Snell & Wilmer, L.L.P., counsel of record for defendant Playtex Products,
26 Inc. ("Playtex"). I make this Declaration in support of Playtex's Motion to Dismiss
27 Plaintiff's Complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6). I have
28

1 personal knowledge of the facts set forth below and if called upon as a witness I can
2 competently testify to them.

3 2. Attached as Exhibit "A" is a true and correct copy of a letter that
4 Plaintiff's attorney, John H. Donboli, sent to Mr. Neil P. Defeo, Chief Executive
5 Officer of Playtex, on July 24, 2007, entitled "Notice of Violation of Consumer
6 Legal Remedies Act."

7
8 I declare under penalty of perjury under the laws of the State of California
9 that the foregoing is true and correct. Executed this 13 day of November at Costa
10 Mesa, California.

11 
12 Ellen L. Darling

Snell & Wilmer

L.L.P.
LAW OFFICES
600 Anton Boulevard, Suite 1400
Costa Mesa, California 92626-7689
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EXHIBIT A



July 24, 2007

VIA FEDERAL EXPRESS

Mr. Neil P. DeFeo
Chief Executive Officer
Playtex Products Inc.
300 Nyala Farms Road
Westport, CT 06880

NOTICE OF VIOLATION OF CONSUMERS LEGAL REMEDIES ACT

Re: **David Paz v. Playtex Products, Inc.**
San Diego Superior Court, Case No.: Unfiled

Dear Mr. DeFeo,

Please be advised that pursuant to California Civil Code § 1782, we hereby present your company with our statutory thirty-day notice as required by the Consumers Legal Remedies Act ("CLRA"). We hereby demand that Playtex Products, Inc. ("Playtex") remedy the violations set forth herein within 30 days or less from your receipt of this letter.

Be advised, Playtex is in violation of the CLRA which prohibits unfair methods of competition and unfair and deceptive business acts or practices such as: "(2) Misrepresenting the source, sponsorship, approval, or certification of goods or services; (4) Using deceptive representations or designations of geographic origin in connection with goods or services; and (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have. See California Civil Code Section 1770(a).

Our office was recently retained by Mr. David Paz regarding Playtex's false representation that its spill-proof cups (e.g., Sipster, Insulator, Insulator Sport Straw Cup, etc.) are "Made in U.S.A." and/or "Made in the U.S.A." This claim is false and violates Civil Code Section 1770(a)(2), (4), and (5) because the above-referenced products are manufactured with component parts that are manufactured and imported from foreign countries.

Mr. Neil P. DeFeo
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FACTS

On several occasions during the relevant statutory time period, Mr. Paz purchased Playtex's products in San Diego, California. In each case, the labeling for said cups were marked "Made in U.S.A." and/or "Made in the U.S.A."

Contrary to Playtex's advertising and representations, Playtex's spill-proof cups contain parts that are entirely or substantially made, manufactured or produced outside of the United States, including but not limited to plastic-molded component parts, rubber parts, and/or printed graphic labels. Despite the true facts to the contrary, Playtex actively advertised, and continues to print on the Playtex spill-proof cup packaging that the products are "Made in U.S.A." and/or "Made in the U.S.A."

Unfortunately, many consumers and users of Playtex's products are particularly vulnerable to these deceptive and fraudulent practices. Most consumers possess very limited knowledge of the likelihood that products claimed to be made in the United States are in fact made in foreign countries. This is a material factor in many individuals' purchasing decisions, as they believe they are supporting American companies and American jobs. Furthermore, some consumers believe that "Made in U.S.A." and/or "Made in the U.S.A" products are higher quality than their foreign-manufactured counterparts. Due to Playtex's scheme to defraud the market, members of the general public were fraudulently induced to purchase Playtex spill-proof cups at premium prices. California laws are designed to protect consumers from this type of false advertising and predatory conduct. This scheme to defraud consumers is ongoing and will victimize consumers each and every day until altered by judicial intervention.

DEMAND

Demand is hereby made to discontinue the false labeling of Playtex cups as "Made in U.S.A." and/or "Made in the U.S.A," compensate the injured members of the California public and pay all incidental and consequential damages. Playtex must also pay our client's legal fees as provided by the CLRA and consent to the entry of a permanent injunction preventing any further predatory acts against the public.

The proposed injunction would prohibit Playtex from:

- (1) Continuing its practice of labeling its spill-proof cups with the mark "Made in U.S.A." and/or "Made in the U.S.A."
- (2) Misleading customers and distributors by advertising and marketing its spill-proof cups as "Made in U.S.A." and/or "Made in the U.S.A."; and

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- (3) For a limited time, packaging its spill-proof cups with a product insert that includes language regarding its previous false representations.

Our office will be required to monitor your customer files to insure compliance with the injunction. Playtex must also undertake all of the following actions to satisfy the requirements of the CLRA:

- (1) Identify or make a reasonable attempt to identify all consumer similarly situated;
- (2) Notify all persons so identified that, upon the customers' request, Playtex will offer an appropriate correction, replacement, or other remedy for Playtex's wrongful conduct;
- (3) Undertake (or promise to undertake within a reasonable time if it cannot be accomplished immediately) the actions described herein for all affected persons who so request; and
- (4) Cease the unlawful methods, acts or practices set forth above by the injunction.

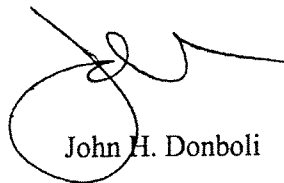
As damages continue to change each month, our client will provide up to date figures upon receiving notice of Playtex's agreement to resolve the CLRA claims.

While our office is agreeable to resolve the CLRA claims for individual damages, resolution of all other claims will require significant penalty and offer of proof as to Playtex's business practices and affected consumers. Formal injunction language can then be agreed to.

We will refrain from filing and serving a Complaint that includes any element of actual damages pursuant to the CLRA to Playtex's registered agent for service of process in California until expiration of the 30-day statutory time period pursuant to the CLRA.

Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,



John H. Donboli